

INDEMNITY, HOLD HARMLESS, ESTOPPEL AND DEFENSE AGREEMENT

This Indemnity, Hold Harmless, Estoppel, and Defense Agreement (“Agreement”) is made and entered into this 22 day of December, 2017, by and between the County of El Dorado, a political subdivision of the State of California (“County”) and Joe Harn, individually and as the Auditor-Controller of the County of El Dorado (collectively “Auditor-Controller”). County and Auditor-Controller are hereinafter sometimes collectively referred to as the “Parties.”

RECITALS

WHEREAS, pursuant to the California Mitigation Fee Act, (Cal. Gov. Code § 66000 et seq.) Local agencies may establish fees in connection with the approval of a new development project to offset the costs of, new public facilities that become necessary as a result of new development projects; and

WHEREAS, there exist, within the geographical boundaries of the County of El Dorado numerous Community Services Districts and Fire Protection Districts providing park and recreation and fire protection services respectively. These districts include, but are not limited to El Dorado Hills Community Services District, Cameron Park Community Services District, Diamond Springs/El Dorado Fire Protection District, El Dorado County Fire Protection District, El Dorado Hills County Water District, Garden Valley Fire Protection District, Lake Valley Fire Protection District, Georgetown Fire Protection District, Rescue Fire Protection District, Pioneer Fire Protection District, Mosquito Fire Protection District. (Hereinafter referred to as “Districts”); and

WHEREAS, in 1988, the County of El Dorado passed Ordinance No. 3991 establishing a “Fire District Improvement Fee” which authorizes the El Dorado County Board of Supervisors to adopt and collect fees on behalf of fire districts within the County to offset the impacts of new development on fire protection services; and

WHEREAS, in 1995, the County of El Dorado passed Ordinance No. 4404, establishing “CSD and Parks and Recreation Impact Mitigation Fees,” which authorizes the El Dorado County Board of Supervisors to adopt and collect fees on behalf of community services districts within the County to offset the impacts of new development on parks and recreation services equipment and capital facilities; and,

WHEREAS, over time, the County of El Dorado has adopted various development impact mitigation fee programs pursuant to the Mitigation Fee Act including but not limited to a Traffic Impact Mitigation (TIM) Fee program to address the impacts of development on the roads, streets, and highways within the jurisdictional boundaries of the County;

WHEREAS, the Auditor-Controller notified the County of the statutory requirements under the Mitigation Fee Act in March of 2013, June, 2014, and June 2015; and

WHEREAS, in December, 2015, Thomas Austin, *et al.*, filed suit against the County and certain Districts within the County, which, among other things, demanded a refund of all development impact fees collected by the County and held by the County in certain development impact fee accounts. This case is still pending in El Dorado County Superior Court and remains unresolved; and,

WHEREAS, prior to and since the inception of the Austin litigation, Districts are requesting that funds be transferred from the development impact fee accounts held by the County on behalf of the Districts to the operating accounts of the Districts to reimburse the Districts for expenditures on facilities and equipment necessitated at least in part by new development.

WHEREAS, both County and the Districts believe these transfers can be made in accordance with law, and wish the current and future monetary transfers to occur as soon as possible, and without the need for litigation; and,

WHEREAS, the County and the Auditor-Controller want to enter into this agreement so that the Auditor-Controller can proceed to transfer the aforesaid money to the operating accounts of the Districts in accordance with law and without liability; and,

THEREFORE, County and Joe Harn, individually and as Auditor-Controller, mutually agree as follows:

1. Transfer of Funds

Upon the receipt of a request for disbursement of Development Impact Mitigation Fees by the County of El Dorado, or by a District as described above, County and Auditor-Controller will cooperate in good faith to review the request. County and the Auditor-Controller will disburse the requested fees within thirty (30) days of receiving sufficient documentation confirming and itemizing the expenditure for which the District seeks disbursement of the fees. Notwithstanding the foregoing, if an agreement between the County and the District requesting the disbursement of the fees specifies a time limit for the County to review the request and disburse the fees, the County and the Auditor-Controller will cooperate in good faith to review the request and disburse the fees in accordance with the time limits set forth in that agreement.

In the event any issues arise regarding the sufficiency of documentation or the validity of an expenditure, County and Auditor-Controller will work in good faith with the District in an attempt to resolve the issues within a reasonable time.

2. County's obligation to defend, indemnify and hold Auditor-Controller harmless.

A. As between the Parties to this agreement, County waives any right or claim as against the Auditor Controller as to the correctness and appropriateness of all information in any Mitigation Fee Act plan or program adopted by the County and/or in the Districts' Impact Mitigation Fee Plan, as well as all information, calculations, and conclusions contained in any impact fee studies to date conducted by the Districts or its agents, subcontractors, or consultants,

and in particular, County shall take full responsibility for its decision to pay said sums from the Districts' Impact Mitigation Fee Accounts. Notwithstanding the foregoing, it is understood by the Parties that this provision in no way limits the ability of the County to challenge the correctness, completeness, or appropriateness of any information contained in the impact fee studies submitted by the Districts as against any party other than the Parties to this agreement.

B. County agrees to immediately defend, indemnify and hold Joe Harn, individually and as Auditor-Controller, harmless against and from any and all claims, suits, losses, demands, judgments, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of damage to property, or any economic or consequential losses of any kind and nature including but not limited to the amount of any refunds which are claimed or in any way arise out of, are connected to or implicate the Auditor-Controller's transfer of funds on behalf of the County, as provided herein, except as expressly prohibited by law.

C. County further agrees that to the extent any court determines that the amounts transferred herein must be refunded pursuant to the Mitigation Fee Act in any action filed by or on behalf of any person, or individual, County agrees to hold Joe Harn, individually and as Auditor-Controller, harmless in regards to such sums. As part of its obligation to hold Joe Harn harmless, the County agrees to either (1) pay the amount to be refunded to those entitled to the refund; or (2) indemnify Joe Harn, individually and as the Auditor-Controller, for the amount to be refunded through a direct payment from the County to the Auditor-Controller within 30 days; or (3) to the extent authorized by an agreement between the County and any District or as otherwise provided for by law, indemnify the Auditor-Controller through the withholding of property tax revenues due to the District.

D. This duty to indemnify and save Joe Harn, individually and as the Auditor-Controller, harmless, includes the duties to defend all actions or proceedings embraced by the indemnity as set forth in California Civil Code section 2778, including without limitation the duty to defend against any alleged active negligence of any other party to this indemnity agreement.

E. Estoppel: The County is hereby estopped from asserting or claiming that any payments under Section 1., above, constitutes a violation of Government Code Section 24054, and is further estopped from asserting that any payment hereunder is unconscionable or contrary to public policy in any way, or that this estoppel provision itself is against public policy. In the event that a court of law ultimately and finally determines that this estoppel proviso is contrary to law or public policy, County will nevertheless, remain obligated to perform all of its remaining obligations hereunder on the basis of justifiable reliance on County's representations as herein set forth, and on prejudicial change of position by Joe Harn, individually, and as the El Dorado County Auditor-Controller as well as under the doctrine of Promissory Estoppel.

3. General Provisions.

A. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California. No such action may be instituted by either party until they have met and conferred over any disputed issues, and made a good faith effort to resolve their disagreements thereon.

B. Severance. Any provision of this Agreement which proves to be invalid or illegal shall in no way affect, impair or invalidate any other provisions of this Agreement, and such other provisions shall remain in full force and effect.

C. Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified in writing signed by both parties. This Agreement shall be interpreted as if jointly prepared by the parties. No presumption shall arise from the identity of the drafter.

D. Authority. Each party warrants to each other that the individual signing this Agreement on behalf of such party is fully authorized to bind such party and agrees to be bound by this Agreement as of the effective date of this Agreement.

E. Administrator. The County employee with responsibility for administering this Agreement is Don Ashton, Chief Administrative Officer, or successor.

F. No Third Party Rights. This Agreement has been created exclusively for the benefit of the signatory parties and no rights are created in any third party by entry into this Agreement.

G. Effective Date: The effective date of this indemnity agreement shall be upon execution by the parties.

H. Notices. All notices permitted or required under this Agreement shall be deemed made when delivered to the applicable party's representative as provided in this Agreement. Additionally, such notices may be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

COUNTY:

Michael Ciccozzi,
County Counsel or successor
County Counsel Office
330 Fair Lane
Placerville, CA 95667

Don Ashton
Chief Administrative Officer or successor
330 Fair Lane
Placerville, CA 95667

AUDITOR-CONTROLLER:

Joe Harn, or successor
Office of the Auditor-Controller
330 Fair Lane
Placerville, CA 95667

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid, return receipt requested and addressed to the party at its applicable address.

I. Settlement: This Agreement is the result of a compromise and settlement of claims which are potentially contested, and shall never, at any time, for any purpose, either in whole or in part, be construed as an admission or acknowledgment of liability, or an admission or acknowledgment of responsibility, or an admission or acknowledgment of fact or evidence of such fact on the part of any Party. This Agreement, and all negotiations associated with it, is intended to affect a compromise that is subject to the protections of Section 1152 of the Evidence Code of the State of California.

J. Time of the Essence: The parties shall act promptly and in good faith to do all such acts, including, but not limited to, execution of any necessary documents, required effectuate the terms of this Agreement.

K. Enforcement of Agreement: In the event of litigation, including but not limited to the filing of a petition for writ of mandate to enforce any of the terms and conditions of this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have executed this Indemnity, Hold Harmless Estoppel and Defense Agreement on the dates set forth below.

Dated: _____

Dated: _____

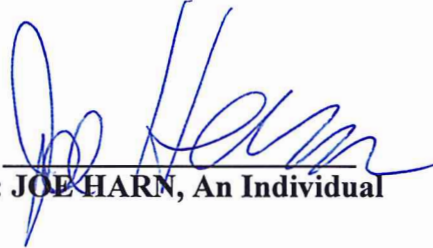
COUNTY OF EL DORADO

**EL DORADO COUNTY
AUDITOR - CONTROLLER**

By: _____
Chairman, Board of Supervisors


By: _____


ATTEST: James S. Mitrisin, Clerk of the Board

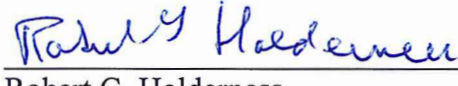

By: **JOE HARN, An Individual**

By: _____
Deputy Clerk

Approved As To Form:



Michael Ciccozzi,
County Counsel



Robert G. Holderness
Attorney for Joe Harn